

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

FILED

2010 SEP -3 P 3:12

DIANE SCHOONOVER,

)

U.S. DISTRICT COURT
EASTERN DIST. TENN.

Plaintiff,

)

No. 1:10-cv-252 BY DEPT. CLERK

v.

)

UNITED OF OMAHA LIFE INSURANCE
COMPANY,

)

Mattice/Carter

Defendant.

)

NOTICE OF REMOVAL

Defendant United of Omaha Insurance Company ("United of Omaha") files this Notice to remove to this Court an action brought against it and currently pending in the Circuit Court of Hamilton County, Tennessee, bearing Docket No. 10C946, and with respect thereto, would show this Court as follows:

I.

The above-styled cause was commenced in the Circuit Court of Hamilton County, Tennessee, Case No. 10C946, by virtue of a Complaint filed by Plaintiff Diane Schoonover ("Schoonover" or "Plaintiff") on July 28, 2010, against United of Omaha. United of Omaha was served with process on or about August 5, 2010. Pursuant to 28 U.S.C. § 1446(a), a copy of the aforementioned Complaint, along with copies of process, are attached hereto and made a part of this Notice by reference.

II.

Upon information and belief, Plaintiff is a citizen of Hamilton County, Tennessee.

III.

This action is one of a civil nature for damages claimed as a result of alleged breach of an insurance contract by the Defendant. Schoonover was a participant in a group long-term disability insurance policy purchased through United of Omaha and the Hamilton County Schools (“Plan”). Plaintiff’s action is civil in nature, there is complete diversity jurisdiction, and this Court has jurisdiction over Plaintiff’s action under the provisions of 28 U.S.C. § 1332.

Defendant filed this Notice of Removal in this Court on September 3, 2010. Defendant’s Notice of Removal has been filed within the 30 day time period in 28 U.S.C. § 1446(b) because it is being filed within thirty days of when United of Omaha was served with process.

This Court has jurisdiction over this cause under 28 U.S.C. § 1332(a)(1) and (c)(1) and 28 U.S.C. § 1441, *et seq.*

There is complete diversity of citizenship between Plaintiff and Defendant. Plaintiff is a resident of Tennessee, and Defendant is a Nebraska corporation.

While Plaintiff’s Complaint does not allege a specific monetary amount of damages, the Complaint seeks “past due benefits to Plaintiff in an amount equal to the contractual amount of benefits to which she is entitled,” prejudgment interest, treble damages and/or a 25% penalty based on the value of the contractual benefits, attorneys’ fees, and costs. Complaint ¶ Prayer for Relief. Based on the totality of Plaintiff’s prayer for relief, Plaintiff’s possible damages exceed the jurisdictional threshold for diversity jurisdiction.

The time period within which Defendants are required to file this Notice of Removal pursuant to 28 U.S.C. § 1446 has not yet expired. Since the date on which the applicable Defendant was served with the summons and a copy of the Complaint, there have been no other proceedings in this case in the Circuit Court of Hamilton County, Tennessee.

United of Omaha files herewith a copy of all process, pleadings, and orders served upon all parties to this action and available from the Circuit Court of Hamilton County, Tennessee at the time of filing.

The allegations of this Notice are true and correct and within the jurisdiction of the United States District Court for the Eastern District of Tennessee, and this cause of action is removable to the United States District Court for the Eastern District of Tennessee.

WHEREFORE, Defendant United of Omaha files this Notice for the purpose of removing this action from the Circuit Court of Hamilton County, Tennessee, to the United States District Court for the Eastern District of Tennessee.

Respectfully submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

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Counsel for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon adversary counsel, via U.S. Mail, this 3rd day of September, 2010, as follows:

D. Seth Holliday, Esq.
Eric Buchanan & Associates, PLLC
414 McCallie Avenue
Chattanooga, TN 37450-1800

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

By: Carr S. Holliday